

Set-off Defence

Abstract

The thesis deals with set-off from the point of view of procedural law and using the method of functional interpretation of law, strives to provide answers to questions that appear in the court proceedings in connection with its use. It builds on theorists who dealt with the issue of inducing an effect of set-off in the proceedings in the late 20th century, but also takes into account the findings of current academic community and presents the judicial conclusions reached by (not only Czech) courts. The thesis is divided into 4 chapters. The first chapter briefly deals with the substantive legislation of set-off (especially the requirements laid down for the receivables that are to be set-off, and cases where set-off is prohibited by law). A declaration of set-off as a substantive act may be decisive in assessing the admissibility of set-off in proceedings. The second chapter describes the origin of set-off in ancient Rome and the different concepts of set-off in current legal codifications, which is the result of inconsistent interpretation and reception of this institute by medieval scholars. This is reflected by Czech legal science in existence of civilian and procedural theory of offsetting. In the third chapter, the thesis deals with purely procedural aspects of set-off. The interpretation is focused on the description and definition of set-off inducing act (*námitka započtení*), its comparison with counterclaim (*vzájemný návrh*) in order to draw attention to their diametrically different nature despite their seeming similarity. It also discusses at what stages and in what types of civil proceedings the objection to set-off may be raised, who may do so or who is required to pay the costs of the proceedings if it was brought on the basis of a justified action which was subsequently rejected as a result of set-off. A thorough explanation is also given to questions (i) whether the application of a claim for set-off in proceedings has the effects of *lis pendens*, and the effects of *res iudicata* respectively, and (ii) the admissibility of a conditional objection to set-off, even though at first sight it appears to be prohibited by both the substantive and procedural law. In the last fourth chapter, the Czech procedural legislation of set-off (and the resulting conclusions of theory and court practice) is compared in basic questions with the French and German regulations.

Key words: set-off, set-off defence, proceedings